that case, however, makes it clear that the decision of the Indian Court was substantially based upon the provisions of section 530 of the Indian Code of Criminal Procedure which provided that if any Magistrate "not being empowered by law in this behalf" tries an offender the proceedings shall be void. The Court there held that since under section 195 the Court had no jurisdiction to try the case in the absence of a sanction to prosecute, having regard to the express provisions of section 530 the Magistrate "not being empowered by law in this behalf" to try the case, the proceedings were void. There is no corresponding section to section 530 of the Indian Code in our Code. No reference was apparently made during the hearing of *Hassan bin Isahak's* appeal to the very much earlier case of *Salleh & Anor.* v. *Rex*,[3] which expressly decided, following earlier Indian decisions, that the want of a sanction does not vitiate a conviction, unless there is evidence that a failure of justice has been thereby occasioned. That decision, indeed, gives full effect to the express wording of the latter part of section 448 of the Criminal Procedure Code. Nor was any reference apparently made to the case of *Ng Chuan & Anor.* v. *Rex*.[4] In that case the accused had been convicted of an offence under the Tobacco Duties Ordinance. Upon appeal it was argued that the requisite sanction had not been obtained before the proceedings were heard. In allowing the appeal Murray-Aynsley C.J. said:—

> "Where a sanction is required to prosecute, the lack of it deprives the Court of jurisdiction. This cannot be cured unless there is statutory provision to that effect. Section 448 of the Criminal Procedure Code makes provision for want of sanction where such sanction is required by section 139 of that Code, but not otherwise".

Whilst I consider myself bound by the decision of the Court in *Hassan bin Isahak's case* I would with respect, take leave to doubt whether the Court was correct in expressly relying upon the Indian case of *Muthu Moopan*, having regard to the fact that that decision was itself based upon the express provisions of section 530 of the Indian Code which finds no counterpart in our Code.

However, I must proceed upon the basis that the absence of a sanction to prosecute for an offence under section 182 of the Criminal Procedure Code renders all subsequent proceedings before a Magistrate null and void despite the fact that the want of sanction did not occasion any miscarriage of justice. What, then, is the position where there has been a sanction to prosecute, but the sanction is defective by reason of some mistake in the particulars stated therein? After careful consideration I am clearly of the opinion that such a defect falls within the words "error, omission or irregularity" in the "other proceedings" before trial within the meaning of section 448(a) of the Criminal Procedure Code, and that it shall not vitiate the conviction unless it occasions a miscarriage of justice. As Hyndman-Jones C.J. pointed out in *Salleh's case*, the object of requiring a sanction to be given before prosecution is to ensure that prosecutions under these sections shall be instituted only after due consideration. In this case it was abundantly clear that the complaint made on the 7th July was, in fact, referable to the incident that took place on the 5th June. It is, therefore, apparent, *ex facie* that the wrong insertion of the date was an error curable under section 448. The fact that it was an error, and no more, was supported by the statement from the Bar of the then Deputy Public Prosecutor, Mr. Massie, and from the file produced by him, that he had applied his mind to the question of the prosecution of the appellant in respect of the complaint made by him to the Magistrate on the 7th July, and that he had sanctioned the prosecution of the appellant for an offence allegedly committed by him on that day under section 182 of the Penal Code. By inadvertence the date of the assault upon the appellant was inserted in the sanction instead of the date of the complaint made by the appellant to the Magistrate arising out of such assault. To set aside these proceedings and to hold them to be a nullity merely by reason of the incorrect date having been inserted by mistake in the sanction to prosecute, would make a farce of the administration of justice and hold it up to ridicule and contempt. I am satisfied that it was a defect curable under section 448(a) of the Criminal Procedure Code and that such defect certainly in no possible way occasioned any failure of justice. For these reasons I am satisfied that this appeal must be, and it accordingly is, dismissed.

Appeal dismissed.

Re ASIAN ORGANISATION LTD.

[C.A. (Tan Ah Tah Ag. C.J., Chua and Ambrose JJ.) July 28, 1961]

[Singapore — Civil Appeal No. 8 of 1961]

Company Law — Application to rectify register of Members — Discretion of Court — Companies Ordinance (Cap. 174), s.101.

The appellants, members of the company, sought under section 101 of the Companies Ordinance to rectify the register of members. Their application was refused by the learned trial Judge. The main grounds of appeal were that: (1) there was no room for the exercise of discretion by the Court, (2) while the learned Judge had a discretion, it was a discretion to be exercised on legal grounds and that no sufficient legal grounds existed in this case, and (3) the learned trial Judge's attention was not drawn to the fact that the decision in *Bellerby* v. *Rowland & Marwood's Steamship Co. Ltd.*,[1] was reversed by the Court of Appeal.

Held: (1) there was a discretion in the Court below whether or not to order a rectification of the register of members;

(2) there were grounds upon which the learned trial Judge was able to exercise his discretion, and in this case the discretion was properly exercised;

(3) the reversal of the decision in the above said case does not affect the correctness of the principles

enunciated in that case on the question of the exercise of the Court's discretion in cases where it is not sought to validate anything which is illegal, *null* and *void*.

Cases referred to:—

(1) *Bellerby* v. *Rowland & Marwood's Steamship Co. Ltd.*, [1901] 2 Ch. 265.

(2) *In re Sly, Spink & Co.*, [1911] 2 Ch. 430.

(3) *Bellerby* v. *Rowland & Marwood's Steamship Co. Ltd.*, [1902] 2 Ch. 14.

COURT OF APPEAL.

K. E. Hilborne for the appellants.

*A. P. Godwin** for the respondent.

The judgment of the Court of Appeal was delivered by:

Tan Ah Tah Ag. C.J.: This is an appeal from a decision of Mr. Justice Wee Chong Jin who refused an application made to him to rectify the register of members of the Asian Organisation Limited. The application was made by the appellants, who are members of the company, under section 101 of the Companies Ordinance (Cap. 174), and the order sought by them was one for rectification of the register of members by deleting the name of Jan Reinier Hendrik Moggre therefrom as the holder of 500 ordinary shares in the company.

The company was incorporated on the 21st July 1953 with an authorised capital of $50,000 divided into 5,000 shares of $10 each. At the commencement of business 2,002 fully paid up shares were issued. Of these 2,002 shares, the applicant Lucy Goh Siew Eng held 1,000 shares and the applicant Anthony Ng Eng Hua (the husband of Lucy Goh Siew Eng) held one share, while Emmeline Koh held 1,000 shares and Tan Koon Jim (the husband of Emmeline Koh) held one share. The applicant Lucy Goh Siew Eng was the Chairman of the Board of Directors and the applicant Anthony Ng Eng Hua was a joint Managing Director of the company, the other joint Managing Director being Tan Koon Jim.

It is common ground that Moggre is the holder of a document purporting to be a share certificate which in terms certifies that he is the registered holder of 500 shares in the company. This document is dated the 28th March 1957 and was in fact signed by Tan Koon Jim and the applicant Anthony Ng Eng Hua on or about that date.

On the 7th September 1959 the applicant Anthony Ng Eng Hua wrote a letter to Tan Koon Jim which contained, *inter alia*, the following paragraph:—

"In order to satisfy all those concerned, the Company's General Meeting will be arranged and date fixed, soon after the arrival of our partner, Mr. J. Moggre."

A copy of this letter was sent by the applicant Anthony Ng Eng Hua to Moggre.

* Mr. A. P. Godwin did not appear at the hearing of the motion.

On the 16th September 1959 the applicant Anthony Ng Eng Hua wrote a letter which began "Dear Messrs. Moggres" and contained the following passage:—

"War has been declared upon A.O.L. (meaning the company) and we are fighting for our survival and I have consulted the Company's solicitors and they are confident that we can win; therefore, since you hold 20% of the company's shares and my wife and myself hold the other 40% we can put the Company back to its sound position, and there is no question of liquidation."

On the 20th October 1959 an extraordinary general meeting of the company was held at its registered office. Both the applicants Anthony Ng Eng Hua and Lucy Goh Siew Eng were present, and it is a matter of some significance that Moggre was elected to be the chairman at this meeting.

It is contended by counsel for the applicants that no valid allotment of 500 shares has ever been made to Moggre. He points out that the board of directors of the company have never held a meeting to approve the issue of the shares to Moggre. He says that even if it can be assumed that Moggre made an offer to take 500 shares, the board of directors as such have never performed any act or acts which can be held to amount to a valid acceptance of the offer.

The first ground of appeal relied upon by the applicants is based on the contention that there was no valid allotment of the 500 shares to Moggre. It is submitted by counsel for the applicants that once it is established that there was no such valid allotment, the applicants are entitled as a matter of law to have the register of members rectified. He maintains that there is no room for the exercise of discretion by the Court in this case. We do not consider it necessary, in the circumstances of this case, to determine the question whether the allotment of the 500 shares was valid. It is sufficient for us to express the view that while irregularities did in fact occur in the issue of the document dated 28th March 1957 to Moggre, nothing that was done in connection with such issue can be said to have been *ultra vires* or illegal.

In arriving at his decision it is clear that the learned trial Judge relied upon the following passage in the judgment of Kekewich J. in the case of *Bellerby* v. *Rowland & Marwood's Steamship Co., Ltd.*[1] at p. 273:—

"The power of rectifying the register given by the 35th section of the Act of 1862 is discretionary in this sense — that the Court properly can only exercise it if satisfied of the justice of the case, and on many applications the Court has declined to exercise this power on the ground that it would not be fair to do so, or, to put it more technically, that the applicant has not established any equity to disturb the existing state of things. And, in considering this, the Court has always had regard to the lapse of time, and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the application is made to disturb it. The applications have been generally made by official liquidators seeking to establish liability for calls; but obviously the like considerations must apply to applications by those who seek to be restored to the privileges of shareholders."

Applying the principles enunciated by Kekewich J., it is plain that in the present case there was a discretion in the Court below whether or not to order rectification of the register of members.

In support of his argument, counsel for the applicants has cited *In re Sly, Spink & Co.*[2] where an order was made by Neville J. for the rectification of the register of members on the ground that certain allotment of shares were invalid. The view which Neville J. took of the question of the exercise of discretion in the matter can be seen from the following passage from his judgment (at p. 435):—

> "The application by the company is an application which will ensure to the benefit of Messrs. Sly and Spink, who are shareholders in the company and were vendors to the company, and I was anxious to see whether there was any possibility of making out a case that, apart from the legal rights of the parties, there was either estoppel or some equity which could be relied upon as justifying the Court in refusing to give effect to them. Having considered the matter carefully from every point of view and having been assisted by able argument, I am quite unable to see that there is anything which can justify me in refusing the relief which is asked for by the applicants if I find that the allotment was in fact invalid, having regard to the facts which are either admitted or have been held by me, and the provisions of the articles of association by which the company was regulated."

This passage, in our opinion, makes it abundantly clear that Neville J. considered that, although the allotments were invalid, he had a discretion whether or not to make an order for the rectification of the register of members.

In our judgment, it is clear law that, even in the case of an invalid allotment of shares, there is a discretion in the Court whether or not to order the rectification of the register of members. The first ground of appeal therefore fails.

The second ground of appeal, which appears to us to be inconsistent with the first ground, is expressed to be that while the learned trial Judge had a discretion, it was a discretion to be exercised on legal grounds, and that there were no legal grounds, or no sufficient legal grounds, in this case upon which such a discretion could properly be exercised.

We have already stated that the document dated 28th March 1957 which was in form a share certificate was signed by the applicant Anthony Ng Eng Hua. We have also referred to the letters dated respectively the 7th September 1959 and 16th September 1959 written by the same person. In addition, there is the undisputed fact, which we have already mentioned, that on the 20th October 1959, Moggre was elected to be the chairman at an extraordinary general meeting of the company at which both the applicants Anthony Ng Eng Hua and Lucy Goh Siew Eng were present. These facts are, in our opinion, amply sufficient to indicate acquiescence in the existing state of things by both the applicants. In other words, there were grounds upon which the learned trial Judge was able to exercise his discretion, and, in our judgment, that discretion was properly exercised in this case.

The third ground of appeal is that the learned trial Judge's attention was not drawn to the fact that the decision of Kekewich J. in *Bellerby* v. *Rowland & Marwood's Steamship Co., Ltd., supra,* was reversed by the Court of Appeal (see *Bellerby* v. *Rowland & Marwood's Steamship Co., Ltd.*[3]). It is true that the decision of Kekewich J. was reversed by the Court of Appeal but it is important to note the grounds upon which his decision was reversed. What was decided by the Court of Appeal was that when a company has performed an act which is *ultra vires* by removing the names of surrenderors of shares from the register, the surrender being illegal, null and void in the circumstances in which it was made, the company cannot rely on lapse of time or acquiescence to validate what was illegal, null and void. It is clear, in our opinion, that the reversal of the decision of Kekewich J. by the Court of Appeal does not affect the correctness of the principles enunciated by him on the question of the exercise of the Court's discretion in cases where it is not sought to validate anything which is illegal, null and void.

The fourth and last ground of appeal is based on the fact that the document dated 28th March 1957 and the letters of the 7th and 16th September 1959 were all signed by only one of the applicants viz. Anthony Ng Eng Hua. It is therefore submitted that the applicant Lucy Goh Siew Eng is not bound by the acts of her husband. We have already referred to the fact that Lucy Goh Siew Eng, who was the Chairman of the Board of Directors, attended an extraordinary general meeting on the 20th October 1959 at which Moggre was elected to be the chairman. In our view, it can be inferred from that fact and from the other facts and circumstances of this case, that the applicant Lucy Goh Siew Eng at all material times acquiesced in regarding Moggre as a shareholder of the company. This ground of appeal therefore fails.

In the result the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Donaldson & Burkinshaw.*